



OFFICE OF THE CITY CLERK ▪ CITY OF BINGHAMTON

Teri Rennia, City Council President
Angela Holmes, City Clerk

Planning Commission
c/o Leigh McCullen
38 Hawley Street
Binghamton, NY 13901

Thursday November 7, 2013

RE: Proposed Amendments to Chapter 410, *Zoning*, Regarding Sale of Tobacco Near Schools

Dear Planning Commission Members,

The Council of the City of Binghamton met with Sharon Fischer from Broome County Department of Health, Sue Moranda from the American Cancer Society, and Lisa Weston-Bialy from Cornell Cooperative Extension at a Work Session on November 4, 2013 to discuss the impact of tobacco advertising on the City of Binghamton's youth. During this meeting, it was suggested that the City of Binghamton adopt zoning legislation which would redefine certain retail uses and prohibit the establishment of "high impact" retail businesses from locating within 500' of school property. The documents distributed to City Council members during the Work Session are enclosed for your review, including an excerpt from the City of Rochester's zoning code, which was recently amended to enact a similar proposal. The Binghamton City Zoning Code would have to be amended accordingly.

City Council would like to explore this initiative and its impacts on the City of Binghamton. During last night's Business Meeting, City Council referred this matter to the Planning Commission, requesting a report on the amendments to Chapter 410, *Zoning*, which would be necessary to enact this proposal, focusing primarily on how the City Code would have to be amended, definitions, allowed uses, and the site plan review process regarding these uses.

If you have any questions or concerns, please feel free to contact me by telephone at (607) 772-7005, or by email at abholmes@cityofbinghamton.com.

Sincerely,

Angela Holmes
City Clerk

cc: City Council
Corporation Counsel



City of Rochester

City Hall Room 308A, 30 Church Street
Rochester, New York 14614-1280
www.cityofrochester.gov

RECEIVED
CITY OF ROCHESTER
CLERK/COUNCIL OFFICE

2012 SEP -4 PM 1:22

August 24, 2012

NEIGHBORHOOD &
BUSINESS DEVELOPMENT
INTRODUCTORY NO.

Thomas S. Richards
Mayor

421, 422

TO THE COUNCIL

Ladies and Gentlemen:

Re: Amending the City Code - Chapter 120 Zoning
Code and Chapter 90 Property Code

Transmitted herewith for your approval is legislation amending various sections of the Zoning Code and the Property Code to accommodate revisions in the regulation of retail sales and services and related business permits. The proposed amendments are described below.

In March 2012 City Council requested that the Administration evaluate how to address the increase in neighborhood concerns about nuisance businesses. In response, a task force comprised of representatives of the Neighborhood and Business Development, Police, and Law Departments; the Mayor's Office, and City Council was charged with recommending a response.

As reflected in the incidence of criminal activity, and other indicators, certain retail uses have a high impact on adjoining neighborhoods due to the nature, volume or intensity of the sales, and the services provided. These high impact uses are more likely than other retail operations to negatively affect adjacent properties and the surrounding neighborhood as a result of increased noise, traffic, and loitering; parking problems, and increased need for police services.

The task force focused on modifications to the City Code as a strategy to address quality of life concerns associated specifically with high impact retail uses. The recommended changes will better define the variety of retail operations and will allow for more efficient allocation of limited enforcement resources. These amendments to the Zoning and Property Codes, taken together, will enable the City to more appropriately address the issues posed by high impact retail uses. Amendments are summarized below.

Chapter 120 Zoning Code

Sections 8, 9, 17, 18, 26, 27, 34, 35, 37, 42, 43, 45, 50, 63, 64, 76, 77, 81, 83, 120, 146, 191, 195, 199 and 208; and PDD # 9 and #12 are all affected by the proposed revisions regarding the regulation of retail sales and service, and will be amended accordingly. The overall intent of these changes is to appropriately locate high impact retail sales and service uses, to restrict the over concentration of such businesses, and to incentivize the establishment of retail uses which will provide desirable merchandise and services with the least impact on adjoining neighborhoods. These amendments will:

- Create five new categories of Retail Sales and Service to better reflect impacts on neighborhoods: High Impact, Low Impact, Specialty, Full-line, and Pawn Brokers
- Establish Specified Use Requirements for the new retail use categories that address concentration of uses, design, and hours of operation
- Modify nonconforming use regulations for the new retail categories accordingly
- Prohibit high impact uses in Residential (R-1, R-2, and R-3) and Neighborhood Center Commercial Districts (C-1)
- Limit the number of zoning districts in which high impact uses can be located
- Increase the number of zoning districts in which specialty retail uses can be established



- 6
- Create Incentives for the establishment of Specialty Retail

The City Planning Commission will be holding an informational meeting on the Zoning Code amendments on Monday, September 10, 2012.

Chapter 90 Building Code

Amendments to Article II of Chapter 90 will:

- Eliminate the need for a Business Permit for: drug stores, Laundromats, and retail stores that do not sell tobacco, alcohol, or lottery tickets
- Exempt businesses that hold a Business License issued by the Chief of Police
- Require proof of proper filing of sales taxes as a condition for issuing a business permit
- Authorize the Commissioner of Neighborhood and Business Development to summarily suspend a business permit when it is determined that emergency action is required to address issues of public health, safety, or welfare

Pursuant to the requirements of Article 8 of the New York State Environmental Conservation Law and Chapter 48 of the City Code, the Mayor, as lead agency, has determined that the proposed action will not result in any significant effects and has issued a negative declaration.

Public hearings on the Code amendments are required.

Respectfully submitted,



Thomas S. Richards
Mayor



City of Rochester

Neighborhood and Business Development
City Hall Room 125B, 30 Church Street
Rochester, New York 14614-1290
www.cityofrochester.gov



Bureau of Planning
and Zoning

CITY OF ROCHESTER CITY PLANNING COMMISSION

PLEASE TAKE NOTICE THAT A
PUBLIC HEARING
HAS BEEN SCHEDULED AS FOLLOWS:

LOCATION: CITY HALL, CITY COUNCIL CHAMBERS, ROOM 302-A
HEARING DATE: MONDAY, SEPTEMBER 10, 2012, beginning at 6:30 PM

Case 7 *Informational Meeting*
File Number: T-02-12-13
Case Type: Zoning Text Amendment
Applicant: City Council
Zoning District: Citywide
Sections of Code: 120-8, 9, 17, 18, 26, 27, 34, 35, 37, 42, 43, 45, 50, 63, 64, 76, 77, 81, 83, 120, 146, 191, 195, 199 and 208; and PDD # 9 and # 12
Purpose: To amend the Zoning Code of the City of Rochester by redefining Retail Sales and Service and imposing new zoning regulations based on these new definitions and categories of use; an action requiring City Planning Commission recommendation to City Council.
The proposed changes include:

- Creating five (5) new definitions of Retail Sales and Service (High Impact, Low Impact, Specialty, Full-line and Pawn Brokers);
- Prohibiting High Impact uses in Residential Districts and in Neighborhood Center Districts (C-1);
- Amending all District Regulations that are affected by the proposed changes;
- Establishing Specified Use Requirements for the new definitions as they pertain to concentration of uses, design, and hours of operation;
- Changing nonconforming use regulations as they pertain to the new Retail Sales and Service categories; and
- Incentivizing Specialty Retail uses.

SEQR: Unlisted
Lead Agency: Mayor's Office

THE FILE IS AVAILABLE FOR PUBLIC REVIEW IN THE DIVISION OF ZONING,
ROOM 125B, CITY HALL, 30 CHURCH STREET (585) 428-6969.
WRITTEN COMMENTS MAY BE SUBMITTED TO THE ADDRESS ON THE FRONT OF
THIS CARD OR EMAIL TO MARGUERITE.PARRINO@CITYOFROCHESTER.GOV
BY 3:00 P.M. THE DAY OF THE MEETING.



DRAFT 7/10/12

Proposed Changes to the Zoning Code to address the issues associated with retail sales and service

Summary

Section 1	<p>This section includes a change in definition for "Retail Sales and Service." Whereas the current code includes only "Retail Sales and Service," the proposed code changes include five (5) new categories for Retail Sales and Service, differentiating by the types of items being offered for sale. The one category proved to be too broad a term from a regulatory standpoint. Operational differences and the impacts of those operations on nearby residents require differentiation in regulatory requirements. The goal is to not only present more limits on the retail establishments that are causing nuisance issues with neighborhoods, but to incentivize alternative retail establishments that provide much needed goods and services to city residents. The new categories are:</p> <ul style="list-style-type: none"> Pawnbrokers Retail Sales and Service, Full-Service Food Stores Retail Sales and Service - High-Impact Retail Sales and Service - Low-Impact Retail Sales and Service, Specialty <p>Note: Red = Insertion, Strike-out = Deletion</p>
Section 2	<p>This section includes the code changes to the Permitted Use list and Specially Permitted Use lists for all Zoning Districts. Changes include differentiating Retail Sales and Service into the specified categories of Retail Sales and Service, adding Office as an allowed use in residential districts, and combining Bars and Restaurants into one category. The changes involving Retail Sales and Service will incentivize uses, other than High-Impact retail, into preexisting nonconforming buildings in residential districts. Changes to Bars and restaurants is a housekeeping item. The two uses are specified separately in the code, but are regulated the same. Because they are often combined in businesses, differentiating them in regulations is often difficult and unnecessary. Making this administrative change will help us as we prepare to modify regulations pertaining to Entertainment in the near future.</p>
Section 3	<p>This section includes a new provision for Article XVIII, "Additional Requirements for Specified Uses" in the Zoning Code. The new provisions include regulations for retail sales and service, including hours of operation, separation requirements, and design requirements.</p>
Section 4	<p>The changes being proposed in this section are applicable to business establishments that are located or proposing to locate in a district where it is not permitted through the district regulations and are legalized or being legalized using "grandfathered" rights.</p> <ol style="list-style-type: none"> 1. Reduces the abandonment period for High-Impact Retail Sales and Service to 3 months instead of nine months. 2. Removes the ability for an applicant to obtain a Use Variance to establish a more intense use (High-Impact retail) in a residential district.

Section 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100



City of Rochester

City Hall Room 308A, 30 Church Street
Rochester, New York 14614-1289
www.cityofrochester.gov

RECEIVED
CITY OF ROCHESTER
CLERK/COUNCIL OFFICE

2012 SEP -4 PM 1:22

August 24, 2012

NEIGHBORHOOD &
BUSINESS DEVELOPMENT
INTRODUCTORY NO.

421, 422

6
Thomas S. Richards
Mayor

TO THE COUNCIL

Ladies and Gentlemen:

Re: Amending the City Code - Chapter 120 Zoning
Code and Chapter 90 Property Code

Transmitted herewith for your approval is legislation amending various sections of the Zoning Code and the Property Code to accommodate revisions in the regulation of retail sales and services and related business permits. The proposed amendments are described below.

In March 2012 City Council requested that the Administration evaluate how to address the increase in neighborhood concerns about nuisance businesses. In response, a task force comprised of representatives of the Neighborhood and Business Development, Police, and Law Departments; the Mayor's Office, and City Council was charged with recommending a response.

As reflected in the incidence of criminal activity, and other indicators, certain retail uses have a high impact on adjoining neighborhoods due to the nature, volume or intensity of the sales, and the services provided. These high impact uses are more likely than other retail operations to negatively affect adjacent properties and the surrounding neighborhood as a result of increased noise, traffic, and loitering; parking problems, and increased need for police services.

The task force focused on modifications to the City Code as a strategy to address quality of life concerns associated specifically with high impact retail uses. The recommended changes will better define the variety of retail operations and will allow for more efficient allocation of limited enforcement resources. These amendments to the Zoning and Property Codes, taken together, will enable the City to more appropriately address the issues posed by high impact retail uses. Amendments are summarized below.

Chapter 120 Zoning Code

Sections 8, 9, 17, 18, 26, 27, 34, 35, 37, 42, 43, 45, 50, 63, 64, 76, 77, 81, 83, 120, 146, 191, 195, 199 and 208; and PDD # 9 and #12 are all affected by the proposed revisions regarding the regulation of retail sales and service, and will be amended accordingly. The overall intent of these changes is to appropriately locate high impact retail sales and service uses, to restrict the over concentration of such businesses, and to incentivize the establishment of retail uses which will provide desirable merchandise and services with the least impact on adjoining neighborhoods. These amendments will:

- Create five new categories of Retail Sales and Service to better reflect impacts on neighborhoods: High Impact, Low Impact, Specialty, Full-line, and Pawn Brokers
- Establish Specified Use Requirements for the new retail use categories that address concentration of uses, design, and hours of operation
- Modify nonconforming use regulations for the new retail categories accordingly
- Prohibit high impact uses in Residential (R-1, R-2, and R-3) and Neighborhood Center Commercial Districts (C-1)
- Limit the number of zoning districts in which high impact uses can be located
- Increase the number of zoning districts in which specialty retail uses can be established



- 6
- Create Incentives for the establishment of Specialty Retail

The City Planning Commission will be holding an informational meeting on the Zoning Code amendments on Monday, September 10, 2012.

Chapter 90 Building Code

Amendments to Article II of Chapter 90 will:

- Eliminate the need for a Business Permit for: drug stores, Laundromats, and retail stores that do not sell tobacco, alcohol, or lottery tickets
- Exempt businesses that hold a Business License issued by the Chief of Police
- Require proof of proper filing of sales taxes as a condition for issuing a business permit
- Authorize the Commissioner of Neighborhood and Business Development to summarily suspend a business permit when it is determined that emergency action is required to address issues of public health, safety, or welfare

Pursuant to the requirements of Article 8 of the New York State Environmental Conservation Law and Chapter 48 of the City Code, the Mayor, as lead agency, has determined that the proposed action will not result in any significant effects and has issued a negative declaration.

Public hearings on the Code amendments are required.

Respectfully submitted,



Thomas S. Richards
Mayor



City of Rochester

Neighborhood and Business Development
City Hall Room 125B, 30 Church Street
Rochester, New York 14614-1290
www.cityofrochester.gov



Bureau of Planning
and Zoning

6

**CITY OF ROCHESTER CITY PLANNING COMMISSION
PLEASE TAKE NOTICE THAT A
PUBLIC HEARING
HAS BEEN SCHEDULED AS FOLLOWS:**

LOCATION: CITY HALL, CITY COUNCIL CHAMBERS, ROOM 302-A
HEARING DATE: MONDAY, SEPTEMBER 10, 2012, beginning at 6:30 PM

Case 7 *Informational Meeting*
File Number: T-02-12-13
Case Type: Zoning Text Amendment
Applicant: City Council
Zoning District: Citywide
Sections of Code: 120-8, 9, 17, 18, 26, 27, 34, 35, 37, 42, 43, 45, 50, 63, 64, 76, 77, 81, 83, 120, 146, 191, 195, 199 and 208; and PDD # 9 and # 12
Purpose: To amend the Zoning Code of the City of Rochester by redefining Retail Sales and Service and imposing new zoning regulations based on these new definitions and categories of use; an action requiring City Planning Commission recommendation to City Council.
The proposed changes include:

- Creating five (5) new definitions of Retail Sales and Service (High Impact, Low Impact, Specialty, Full-line and Pawn Brokers);
- Prohibiting High Impact uses in Residential Districts and in Neighborhood Center Districts (C-1);
- Amending all District Regulations that are affected by the proposed changes;
- Establishing Specified Use Requirements for the new definitions as they pertain to concentration of uses, design, and hours of operation;
- Changing nonconforming use regulations as they pertain to the new Retail Sales and Service categories; and
- Incentivizing Specialty Retail uses.

SEQR: Unlisted
Lead Agency: Mayor's Office

**THE FILE IS AVAILABLE FOR PUBLIC REVIEW IN THE DIVISION OF ZONING,
ROOM 125B, CITY HALL, 30 CHURCH STREET (585) 428-6969.
WRITTEN COMMENTS MAY BE SUBMITTED TO THE ADDRESS ON THE FRONT OF
THIS CARD OR EMAIL TO MARGUERITE.PARRINO@CITYOFROCHESTER.GOV
BY 3:00 P.M. THE DAY OF THE MEETING.**



DRAFT 7/10/12

Proposed Changes to the Zoning Code to address the issues associated with retail sales and service

Summary

Section 1	<p>This section includes a change in definition for "Retail Sales and Service." Whereas the current code includes only "Retail Sales and Service," the proposed code changes include five (5) new categories for Retail Sales and Service, differentiating by the types of items being offered for sale. The one category proved to be too broad a term from a regulatory standpoint. Operational differences and the impacts of those operations on nearby residents require differentiation in regulatory requirements. The goal is to not only present more limits on the retail establishments that are causing nuisance issues with neighborhoods, but to incentivize alternative retail establishments that provide much needed goods and services to city residents. The new categories are:</p> <ul style="list-style-type: none"> Pawnbrokers Retail Sales and Service, Full-Service Food Stores Retail Sales and Service - High-Impact Retail Sales and Service - Low-Impact Retail Sales and Service, Specialty <p>Note: Red = Insertion, Strike-out = Deletion</p>
Section 2	<p>This section includes the code changes to the Permitted Use list and Specially Permitted Use lists for all Zoning Districts. Changes include differentiating Retail Sales and Service into the specified categories of Retail Sales and Service, adding Office as an allowed use in residential districts, and combining Bars and Restaurants into one category. The changes involving Retail Sales and Service will incentivize uses, other than High-Impact retail, into preexisting nonconforming buildings in residential districts. Changes to Bars and restaurants is a housekeeping item. The two uses are specified separately in the code, but are regulated the same. Because they are often combined in businesses, differentiating them in regulations is often difficult and unnecessary. Making this administrative change will help us as we prepare to modify regulations pertaining to Entertainment in the near future.</p>
Section 3	<p>This section includes a new provision for Article XVIII, "Additional Requirements for Specified Uses" in the Zoning Code. The new provisions include regulations for retail sales and service, including hours of operation, separation requirements, and design requirements.</p>
Section 4	<p>The changes being proposed in this section are applicable to business establishments that are located or proposing to locate in a district where it is not permitted through the district regulations and are legalized or being legalized using "grandfathered" rights.</p> <ol style="list-style-type: none"> 1. Reduces the abandonment period for High-Impact Retail Sales and Service to 3 months instead of nine months. 2. Removes the ability for an applicant to obtain a Use Variance to establish a more intense use (High-impact retail) in a residential district.

Section 1

§120-208. Definitions**PAWNBROKER**

Any business or location in which a collateral loan broker, as defined in Article 5 of the New York State General Business Law, is operating.

RETAIL SALES AND SERVICE

The sale, provision of service or on-premises incidental production or assembly of general merchandise to the general public for direct use or consumption, but not including the sale to another business for resale purposes. This shall include carry-out restaurants and the like with six or fewer seats.

RETAIL SALES AND SERVICE, Full-line Food Store

Retail sales and service offering for sale a full selection of food products including at least a variety of fresh produce and not offering for sale products from more than one of the following categories:

1. Tobacco
2. Beer/Wine coolers
3. Lottery

RETAIL SALES AND SERVICE, High-Impact

Retail sales and service offering for sale any product or service which requires an owner, operator or employee to obtain a City of Rochester second-hand dealers license (excluding vehicle-related dealers); any County or State license for tobacco, beer, wine coolers, or lottery; and/or a Federal Firearms Dealers license.

RETAIL SALES AND SERVICE, Low-Impact

Retail sales and service not meeting the definitions of High-Impact Retail Sales and Service, Specialty Retail, or a Full-line Food Store. This shall include carry-out restaurants and the like with six or fewer seats.

RETAIL SALES AND SERVICE, Specialty

Low-impact retail sales and service, less than 1,000 sq. ft., offering for sale only specialized types of foods, products, or services, including, but not limited to: baked goods, candy, health-food, antiques, fashion accessories, sporting goods, antiques, art objects, art and craft supplies, books, clothing, decorative accessories, flowers and plants, handicrafts, jewelry, toys, specialty foods, meats, seafood, shoe repair, and frame shops. No tobacco, beer/wine coolers, or lottery may be included in the inventory of Specialty Retail Sales and Service.

Section 2

6

§ 120-8 Permitted uses. [R-1]

The following uses are permitted in the R-1 District:

- H. Retail Sales and Service, Specialty, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.
- I. Office, when in an existing structure built for a nonresidential use, subject to the hours listed in § 120-146.1.

§120-9 Special permit uses. [R-1]

The following uses are allowed as special permit uses in the R-1 District:

- G. Retail Sales and Service, Full-line Food Store, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.
- H. Retail Sales and Service, Low-Impact, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.

§ 120-17 Permitted uses. [R-2]

- I. Retail Sales and Service, Specialty, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.
- J. Office, when in an existing structure built for a nonresidential use, subject to the hours listed in § 120-146.1.

§120-18 Special permit uses. [R-2]

- M. Retail Sales and Service, Full-line Food Store, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.
- N. Retail Sales and Service, Low-Impact, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.

§ 120-26 Permitted uses. [R-3]

- M. Retail Sales and Service, Specialty, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.
- N. Office, when in an existing structure built for a nonresidential use, subject to the hours listed in § 120-146.1.

§120-27 Special permit uses. [R-3]

- L. Retail Sales and Service, Full-line Food Store, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.
- M. Retail Sales and Service, Low-Impact, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in § 120-146.1.

§120-34 Permitted Uses [C-1]

- K. Retail sales and service, Full-line Food Store, when in an existing building, subject to the additional requirements for specified uses in § 120-146.1, operating between the hours of 6:00 a.m. and 11:00 p.m., except the sale, storage or display of firearms, ammunition or explosives.
- L. Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in § 120-146.1.
- M. Retail sales and service, Specialty, subject to the additional requirements for specified uses in § 120-146.1.
- N. Offices between the hours of 6:00 a.m. and 11:00 p.m.
- O. Bars, restaurants and the like, operating between the hours of 6:00 a.m. and 11:00 p.m., including accessory outdoor seating/assembly areas but excluding drive-through facilities.
- MP. Mixed uses, as listed in this section, not including industrial uses.

§120-35 Special Permit Uses [C-1]

- ~~H. Bar, cocktail lounge and tavern, operating between the hours of 6:00 a.m. and 11:00 p.m., including accessory outdoor seating/assembly areas.~~
- ~~I. Restaurants operating between the hours of 6:00 a.m. and 11:00 p.m., including accessory outdoor seating/assembly areas but excluding drive-through facilities.~~
- ~~JH. Offices operating beyond the hours of 6:00 a.m. to 11:00 p.m.~~
- ~~KI. Retail sales and services operating beyond the hours of 6:00 a.m. to 11:00 p.m.~~

§120-37 Bulk Requirements [C-1]**B. Square footage.****(1) Residential uses.**

(1a) Maximum square footage, any or each principal use or structure: 3,000 square feet. NA.

(2b) Maximum square footage, detached accessory use or structure: 1,000 square feet. NA.

(2) Nonresidential uses.

(a) Maximum square footage, principal use or structure: 3,000 square feet.

(b) Maximum square footage, detached accessory use or structure: 1,000 square feet.

(3) Mixed-Uses

(a) Maximum square footage, each nonresidential use: 3,000 square feet

(b) Maximum square footage, detached accessory use or structure: 1,000 square feet.

§120-42. Permitted Uses and Structures [C-2]

~~M. Retail sales and service when conducted entirely within an enclosed building, except as provided in § 120-163.~~

M. Retail sales and service, Full-line Food Store, when in an existing building, subject to the additional requirements for specified uses in § 120-146.1.

N. Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in § 120-146.1.

O. Retail sales and service, Specialty, subject to the additional requirements for specified uses in § 120-146.1.

~~NP. Limited adult retail store when conducted entirely within an enclosed building.~~

~~OQ. Health clubs and similar facilities.~~

~~PR. Theaters.~~

~~QS. Office.~~

~~RT. Bar/Bars, restaurants and the like, cocktail lounge and tavern including accessory outdoor seating/assembly areas provided the outdoor areas only operate between the hours of 6:00 a.m. and 11:00 p.m., excluding drive-through facilities.~~

~~S. Restaurants and banquet facilities including accessory outdoor seating/assembly areas provided the outdoor areas only operate between the hours of 6:00 a.m. and 11:00 p.m. but excluding drive-through facilities.~~

§120-43 Special Permit Uses [C-2]

T. Retail sales and service, High-Impact, subject to the additional requirements for specified uses in § 120-146.1.

§120-45 Bulk Requirements [C-2] {Note: this is a code correction}**B. Square footage.****(1) Residential uses.**

- (a) Maximum square footage, principal use or structure: N/A.
- (b) Maximum square footage, detached accessory use or structure: N/A.

(2) Nonresidential uses.

- (a) Maximum square footage, principal use or structure: 6,000 square feet.
- (b) Maximum square footage, detached accessory use or structure: N/A.

(3) Mixed-Uses

- (a) Maximum square footage, each nonresidential use: 6,000 square feet
- (b) Maximum square footage, detached accessory use or structure: NA.

§120-50. Permitted Uses and Structures [C-3]

The following uses are permitted in the C-3 District:

- K. Retail sales and service, Retail sales and service, Full-line Food Store, subject to the additional requirements for specified uses in § 120-146.1.
- L. Retail sales and service, High-Impact, subject to the additional requirements for specified uses in § 120-146.1.
- M. Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in § 120-146.1.
- N. Retail sales and service, Specialty, subject to the additional requirements for specified uses in § 120-146.1.
- L.O. Health clubs and similar facilities.
- MP. Theaters.
- NQ. Amusement center.
- OR. Outdoor entertainment.
- PS. Office.
- QT. Motels and hotels.
- R. Bar, cocktail lounge and tavern, including outdoor seating/assembly areas.
- SU. Bars, restaurants and the like banquet facilities, including outdoor seating/assembly and drive-throughs, subject to the additional requirements for specified uses in § 120-136.
- TV. Drive-throughs, subject to the additional requirements for specified uses in § 120-136.
- UW. Warehouse and wholesale distribution facilities under 15,000 square feet.
- VX. Light Industrial services when conducted entirely within a completely enclosed building.
- WY. Research laboratories including testing facilities.
- XZ. Automotive-related uses, including car washes, vehicle service stations, vehicle sales, vehicle rental services, vehicle repair stations including commercial vehicle repair, and vehicle sales accessory to vehicle repair stations, subject to the additional requirements for specified uses in Article XVIII.
- YAA. Parking lots as a principal use, including ancillary community garages and parking lots, subject to the additional requirements for specified uses in § 120-131.
- ZBB. Sexually oriented businesses, subject to the additional requirements for specified uses in § 120-148, including only limited adult retail store, adult retail store and escort agency.
- CC. Pawnbroker

§120-63. Limited Uses [CCD]

The following limited uses shall meet the requirements set forth in Article XVIII, Additional Requirements for Specified Uses:

- A. Homeless residential facilities.
- B. Personal wireless communication facilities.
- C. Residential care facilities.

6

D. Rooming houses.

E. Surface parking lots when a parking demand analysis is submitted to substantiate the need for the lot.

F. Retail Sales and Service, High Impact

§120-64. Prohibited Uses [CCD]

The following uses are prohibited in any building or site in the CCD:

A. Homeless shelters.

B. Sexually oriented businesses.

C. Uses, excluding building parking or outdoor seating/assembly areas, not in a fully enclosed building.

D. Waste centers.

E. Pawnbroker

§ 120-76. PMV Public Market Village District

A. Permitted uses.

~~(10) Retail sales and services.~~ Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in § 120-146.1.

~~(11) Retail sales and service, Specialty, subject to the additional requirements for specified uses in § 120-146.1.~~

~~(12) Retail sales and service, Full-line Food Store, subject to the additional requirements for specified uses in § 120-146.1.~~

~~(11) Bar, cocktail lounge and tavern including outdoor patio areas operating between the hours of 6:00 a.m. and 11:00 p.m.~~

~~(1213) Restaurants~~ Bars, restaurants and the like including outdoor seating/assembly areas provided the outdoor areas only operate between the hours of 6:00 a.m. and 11:00 p.m. but excluding drive-through facilities

§ 120-77 H-V Harbortown Village District

A. Permitted uses and structures.

(7) The following uses are permitted as of right in the H-V Harbortown Village District if located 30 feet or more from the edge of the Genesee River, subject to site plan approval:

(a) Single-family attached dwellings.

(b) Live-work spaces.

(c) ~~Bars, Restaurants and the like~~ Restaurants not exceeding 2,500 square feet and excluding drive-through facilities.

~~(d) Bars, taverns and cocktail lounges not exceeding 2,500 square feet.~~

~~(ed) Private clubs not exceeding 2,500 square feet.~~

~~(fe) Office space not exceeding 2,500 square feet.~~

~~(gf) Retail sales and services, Specialty, not exceeding 2,500 square feet.~~

(g) Retail sales and services, Low-Impact, not exceeding 2,500 square feet.

B. Special permit uses.

The following uses are allowed as special permit uses in the H-V District:

(1) The following uses when located within 30 feet of the edge of the Genesee River:

~~(a) Bars, taverns and cocktail lounges.~~

~~(ba) Museums and aquariums.~~

~~(eb) Private clubs.~~

- (dc) ~~Restaurants~~ Bars, restaurants and the like, excluding drive-through facilities.
- (e) ~~Retail sales and services.~~
- (fd) Tourist information centers.
- (ge) Other establishments relating to and supporting water-dependent activities.

(13) Retail sales and service, Full-line Food Store, subject to the additional requirements for specified uses in § 120-146.1.

§120-81 Permitted Uses and Structures. [M-1]

A. The following uses are permitted in the M-1 District:

(n) Retail sales and service, Full-line Food Store, when in an existing building, subject to the additional requirements for specified uses in § 120-146.1.

B. The following uses are permitted in the M-1 District when located in any existing multistory building or a single-story building not originally designed for industrial purposes:

- (1) Dwelling unit conversions.
- (2) Live-work space, subject to the additional requirements for specified uses in § 120-142.1.
- (3) ~~Retail sales and services.~~ Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in § 120-146.1.
- (4) Retail sales and service, Specialty, subject to the additional requirements for specified uses in § 120-146.1.
- (45) Offices and clinics.
- (5) ~~Bars, cocktail lounges and taverns.~~
- (6) ~~Bars and Restaurants and banquet facilities.~~

§120-83 Special permit uses. [M-1]

The following uses are allowed as special permit uses in the M-1 District:

A. The following uses, when located in a single-story building originally designed for industrial purposes or a vacant lot, subject to a marketability analysis as set forth in § 120-192. The Planning Commission may, in approving a special permit, waive or modify the off-street parking requirements if it finds such action is warranted by reason of the nature of the occupancy, location of the property or availability of shared or public parking facilities.

- (1) ~~Retail sales and services.~~ Retail sales and service, High-Impact, subject to the additional requirements for specified uses in § 120-146.1.
- (2) Offices or clinics.
- (3) ~~Bars, cocktail lounges and taverns.~~
- (34) ~~Bars, Restaurants, and the like~~ Restaurants.
- (54) Motels and hotels.
- (65) Amusement centers.
- (76) Public and semipublic uses.
- (87) Health clubs.
- (98) Mixed uses.
- (109) Entertainment, subject to the additional requirements for specified uses in § 120-137.
- (110) Places of worship.
- (11) Pawnbroker

§120-120 Zoning Designations and Modifications

D. Mt. Read - Emerson Urban Renewal District.

(3) In the sections of the U-R District designated as M-1, all of the requirements of the M-1 shall apply except as follows:

(a) Prohibited uses.

[8] Pawnbrokers

F. Ridgeway Urban Renewal District.

(1) In the sections of the U-R District designated on the Zoning Map as M-1, all of the requirements of the M-1 shall apply except as follows:

(a) Prohibited uses.

[10] Pawnbrokers

I. Third Ward Urban Renewal District.

(1) In the sections of the U-R District designated on the Zoning Map as M-1, all of the requirements of the M-1 shall apply except as follows:

(b) Prohibited uses. The following uses shall be prohibited:

[11] Pawnbrokers

L. Brooks Landing Urban Renewal District.

(1) Land use areas. The District is divided into three land use areas which are comparable to zoning districts listed in the Rochester Zoning Code:

(b) Neighborhood Commercial Land Use. The Neighborhood Commercial land use area is comparable to the C-1 Neighborhood Center District. In the sections of the District designated on the Land Use Map as "C-1," all of the requirements of the C-1 shall apply, except as follows:

[1] Permitted uses. The following uses are permitted in the Neighborhood Commercial land use area when conducted entirely within an enclosed building:

[c] Retail sales and services, Full-Service Food Stores, Low-Impact and Specialty, subject to 120-146.1, operating between the hours of 6:00 a.m. and 11:00 p.m., except the sale, storage or display of ammunition, explosives or firearms.

(c) Riverfront Commercial Land Use. The Riverfront Commercial land use area is comparable to the C-2 Neighborhood Center District. In the sections of the District designated on the Land Use Map as "C-2," all of the requirements of the C-2 shall apply, except as follows:

[1] Permitted uses:

[a] Multifamily dwellings.

[b] Public and semi-public uses.

[c] Retail sales and service, Full-Service Food Stores, Low-Impact and Specialty, subject to 120-146.1, when conducted in an entirely enclosed building.

M. Erie Canal Urban Renewal District.

(1) Permitted uses:

(d) Retail sales and service, Full-Service Food Stores, Low-Impact and Specialty, subject to 120-146.1.

N. La Marketa North Clinton Avenue Urban Renewal District.

(1) All of the requirements of the C-2 Zoning District shall apply except as follows:

Permitted uses:

(a) Public and semipublic uses.

(b) Retail sales and service, Full-Service Food Stores, Low-Impact and Specialty, subject to 120-146.1.

(c) Health clubs and similar facilities.

(d) Offices.

(e) Bars, cocktail lounges and taverns, including accessory outdoor seating/assembly areas provided the outdoor areas only operate between the hours of 6:00 a.m. and 11:00 p.m.

(f) Restaurants and banquet facilities, including accessory outdoor seating/assembly areas provided the outdoor areas only operate between the hours of 6:00 a.m. and 11:00 p.m.

(g) Mixed uses.

(h) Dwelling units when part of a mixed-use development on the second story or above.

(2) Special permit uses:

(a) Amusement centers.

(b) Entertainment not including sexually oriented uses, subject to the additional requirements for specified uses in § 120-137 of the Rochester Zoning Code.

(c) Retail sales and service, High-Impact, subject to 120-146.1.

Planned Development Districts: [Note: only 2 PDD's required a change. The others did not contain terms for Retail Sales and Service, specifically, or are not vulnerable for nuisance-causing uses]

PDD #9 Canalside Business Center

B. Permitted uses and structures.

(1) The following uses are permitted in Sub-Area 1 when located in an enclosed building:

~~(t) Retail sales and service.~~ Retail sales and service, Full-line Foodstore, subject to the additional requirements for specified uses in § 120-146.1.

(u) Retail sales and service, High-Impact, subject to the additional requirements for specified uses in § 120-146.1.

(v) Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in § 120-146.1.

(w) Retail sales and service, Specialty, subject to the additional requirements for specified uses in § 120-146.1.

~~(x)~~ Technical and vocational schools.

~~(y)~~ Warehouse and distribution facilities.

PDD#9 Eastman Business Park

D. Prohibited uses. The following uses are prohibited in PD #12:

(12) Pawnbroker

Section 3

6

(Requirements for Specified Uses)

§120-146.1 RETAIL SALES AND SERVICE

The purpose of this section is to regulate retail sales and service to promote the health, safety, and general welfare of the citizens and protect the quality of the neighborhoods of the City. High-impact retail sales and service, due to the nature, volume or intensity of the sales and services provided, has a history of or a likelihood of creating negative impacts to adjacent properties or the surrounding neighborhood by virtue operational impacts such as noise, traffic, parking, loitering, and increased need for police services. Other retail operations, low-impact, specialty, and full-line food stores, have so few negative impacts that they may be located in close proximity to residential uses as they will offer products and services to residents.

A. Distance Separation Requirements

(1) Measurement. The following separation requirements shall be measured from any lot line on the same or an adjoining frontage of a High-Impact Retail Sales and Service business to the lot line of another High-Impact Retail Sales and Service business or a protected use listed below. Where a multi-tenant facility such as a shopping center is involved, measurement shall occur from the boundary of the leasehold interest instead of the property line.

(2) Protected uses. For the purpose of measuring separation from High-Impact Retail Sales and Service, "protected uses" shall include the following:

(a) Public and semipublic uses, except police and fire stations;

(b) Private Schools

(3) Distance requirements.

(a) High-Impact Retail Sales and Service

[1] Distance from any protected use: 500 ft

[2] Distance from any other High-Impact Retail Sales and Service: 500 ft.

B. Design Standards

In addition to the standards listed in Article XIX of this Chapter, the following apply:

(1) In new construction, as well as reoccupancy of an existing building, areas of transparency shall be provided along the primary street frontage and shall be equal to 70% of the wall area between the height of two and eight feet from the ground.

(2) In all Retail Sales and Service uses, blocking the windows with interior shelving, or the like, thereby reducing the transparency, is strictly prohibited.

C. Hours of Operation

<u>Use</u>	<u>C-1</u>	<u>C-2</u>	<u>C-3</u>	<u>CCD</u>	<u>M-1</u>	<u>R</u>	<u>V-C</u>
<u>High-Impact</u>	<u>NA</u>	<u>TBD by CPC</u>	<u>24 hours</u>	<u>6am to 2 am</u>	<u>24 hours</u>	<u>NA</u>	<u>NA</u>
<u>Low-Impact</u>	<u>6am to 11pm</u>	<u>6am to 2 am</u>	<u>24 hours</u>	<u>24 hours</u>	<u>24 hours</u>	<u>6am to 9pm</u>	<u>Refer to District Regs.</u>
<u>Specialty</u>	<u>6am to 11pm</u>	<u>6am to 2 am</u>	<u>6am to 11pm</u>	<u>24 hours</u>	<u>6am to 11pm</u>	<u>6am to 9pm</u>	<u>6am to 9pm</u>
<u>Full-line Food Store</u>	<u>6am to 11pm</u>	<u>6am to 2 am</u>	<u>24 hours</u>	<u>24 hours</u>	<u>24-hours</u>	<u>6am to 9 pm</u>	<u>Refer to District Regs.</u>

Section 4

§120-191. Procedures approved by the Director of Zoning

B. Certificate of nonconformity

(4) Additional approvals required.

(a) In addition to the application for the certificate of nonconformity, the following shall require an area variance from the Zoning Board of Appeals:

- [1] Structural alteration or enlargement of a building or structure that is a legal nonconforming use and as defined in Article XXIV.
- [2] Expansion of use of a legally existing nonconforming use and as defined in Article XXIV.

(b) In addition to the application for the certificate of nonconformity, the following shall require a use variance from the Zoning Board of Appeals:

- [1] Restoration of structures damaged or destroyed by any means not within the control of the owner to the extent of 60% or more as defined in Article XXIV.
- [2] ~~Establishment of a use that is of greater intensity than the previous nonconforming use in a structure not designed for a permitted use and as defined in Article XXIV.~~

§120-195. Procedures approved by the Zoning Board of Appeals

B. Variance

(5) Prohibited variances. Certain uses, by their nature, may have such an adverse impact on adjoining properties and neighborhoods as to jeopardize the purpose and goals of the zoning district in which the property is located. To protect neighborhoods from the establishment of such uses certain variances shall be absolutely prohibited. No variance shall be approved that would:

- (a) Permit any use or development in a residential district which is not permitted as of right by the use regulations applicable in such district or in any other residential district established by this chapter, ~~except that a variance may be approved subject to obtaining site plan approval as provided in § 120-191 to permit a commercial or industrial use within a structure designed for commercial or industrial use or not able to be converted to residential purpose.~~

§120-199. Nonconforming Use

G. Abandonment or discontinuance.

(1) When the active operation of all or a portion of a nonconforming use is discontinued or abandoned for a period of nine consecutive months, except for nonconforming High-Impact Retail Sales and Service, for which the period shall be three consecutive months, regardless of any intent to resume or not to abandon the use, the use or portion thereof shall not be reestablished or resumed. The active operation of a use shall be the typical or normal activities associated with the use. In the case of abandonment or discontinuance of all of a nonconforming use, any subsequent use or occupancy of such land or structure shall comply with the use regulations of the zoning district in which such structure is located. In the case of abandonment or discontinuance of a portion of a nonconforming use, the remaining occupied portion of the nonconforming use may continue subject to the provisions of this subsection.

Ordinance No.

**Amending Article II, Business Permits,
Of Chapter 90 Of The Municipal Code,
Property Code**

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. Article II, Business Permits, of Chapter 90 of the Municipal Code, Property Code, as amended, is hereby further amended as follows:

(a) Section 90-32, Definitions, is amended to read in its entirety as follows:

Section 90-32. Definitions.

AUTOMOBILE SERVICE FACILITY - A premises where motor vehicles are sold, leased, repaired or serviced. This definition shall include gasoline stations and car wash facilities.

BAR - A premises where alcoholic beverages are sold for consumption on the premises; or a premises operated for profit or pecuniary gain or as a place of assembly where alcoholic beverages are provided by the operator of the premises, his or her agents, servants or employees, or are brought onto said premises by persons assembling there.

BUSINESS - An automobile service facility, bar, restaurant, retail store or salon as defined herein.

RESTAURANT - A premises where food and/or beverages are sold to be consumed on the premises. This definition shall not include a premises where a nonalcoholic beverage or snack is available but is incidental to the conduct of the business at the premises.

RETAIL STORE - Any business not otherwise covered by this section which is accessible to the public, where food, goods, merchandise or equipment are sold at retail and where tobacco, beer, wine coolers, and/or lottery tickets are sold, in a premises with a total floor space of less than 20,000 square feet.

SALON - An establishment where a hairdresser, barber or beautician conducts their trade, or a body piercing studio or a tattoo studio, other than a home occupation.

(b) Section 90-33 is amended to read in its entirety as follows:

Section 90-33. Business permit required.

No person shall operate or maintain a business within the City without first obtaining a business permit authorizing the operation of said business by said operator at the specific business location. The authority for business permits issued pursuant to this chapter shall be the Commissioner. Businesses that have been issued a license(s) by the Chief of Police are exempt from the business permit requirement.

(c) Section 90-34, Application, is amended by amending subsection F and by adding a new subsection G to read in their entirety as follows:

- F. The Commissioner shall cause an application to be administratively canceled if the applicant fails, with respect to the business or business premises, upon receipt of written notice and time to cure, to abate code violations, or to pay any outstanding judgments rendered by the Municipal Code Violation Bureau, or to complete a building permit or zoning application, or to provide proof of payment of sales tax.
- G. The applicant shall provide proof of payment of sales tax where the business has been ongoing.

(d) There is hereby added a new Section 90-43 to read in its entirety as follows:

Section 90-43. Summary suspensions: general provisions.

- A. When the Commissioner finds the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in such order, a summary suspension of the business permit may be ordered, effective on the date specified in such order or upon service of the order by one of the means set forth in subsection C, whichever shall be later.
- B. An order of summary suspension may be served prior to, simultaneously with, or after the commencement of a proceeding seeking the suspension or revocation of a license.
- C. An order of summary suspension shall be served upon the holder(s) of a business permit by personally serving the business permit holder(s), or by personally serving the business permit holder's manager if one is listed on the business permit application, or by mailing the order by first class mail via confirmation to both the business address and the home address listed on the business permit application of the business permit holder(s).
- D. The order of summary suspension shall contain:
 - a. A detailed description of the charges against the business permit holder(s);

- b. An explanation of the finding that the continued operation of the business endangers the public health, safety, or welfare necessitating immediate closure;
 - c. Identification of the evidence supporting those charges;
 - d. Notice that the business permit holder(s) may:
 - i. Answer the charges in writing and supplement the record; and
 - ii. Demand an expedited suspension or revocation hearing in writing; and
 - e. Notice that a summary suspension shall be deemed to be final if a request for a hearing is not received within twenty (20) days of the issuance of the order of summary suspension.
- E. Any summary suspension imposed under this section shall remain in effect, unless reversed by the Commissioner, until a final decision is rendered after a timely requested hearing.
- F. Any person who continues to operate the business while under an order of summary suspension shall be deemed to be guilty of operating a business without the required business permit in violation of §90-33 and subject to the enforcement provisions set forth in §90-36-E and §90-70 of this Chapter. The disobedience shall also be an additional charge added to the suspension or revocation hearing notice and shall be a basis for suspension or revocation of the business permit.
- G. If a written Answer and demand for an expedited revocation hearing are served by the permit holder(s) on the Commissioner in a timely manner, the Commissioner shall schedule a hearing before a Hearing Officer within fifteen (15) days of receipt of the demand, unless the business permit holder(s) requests a later date.
- H. The Commissioner shall render a final decision within ten (10) days of receipt of the Hearing Officer's finding of facts and recommendations, along with the record of the proceeding.

Section 2. This ordinance shall take effect on November 1, 2012.

6

INTRODUCTORY NO. 422

Ordinance No.

**Amending Chapter 120 Of The Municipal
Code, The Zoning Code, Relating To Retail
Sales And Service**

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. Chapter 120 of the Municipal Code, Zoning Code, as amended, is hereby further amended as follows:

a. Add or amend the following definitions in §120-208 to read as follows:

BAR--An establishment used primarily for the dispensing or sale of alcoholic beverages by the drink for on-site consumption.

PAWNBROKER--Any business or location in which a collateral loan broker, as defined in Article 5 of the New York State General Business Law, is operating.

RETAIL SALES AND SERVICE--The sale, provision of service or on-premises incidental production or assembly of general merchandise to the general public for direct use or consumption. This shall include carry-out restaurants and the like with six or fewer seats

RETAIL SALES AND SERVICE, FULL-LINE FOOD STORE--Retail sales and service offering for sale a full selection of food products including at least a variety of fresh produce and not offering for sale products from more than one of the following categories:

1. Tobacco
2. Beer/Wine coolers
3. Lottery

RETAIL SALES AND SERVICE, HIGH-IMPACT--Retail sales and service offering for sale any product or service which requires an owner, operator or employee to obtain a City of Rochester secondhand dealer's license (excluding vehicle-related dealers); any County or State license or registration for tobacco, beer, wine coolers, or lottery; and/or a Federal Firearms Dealer's license, except not a FULL-LINE FOOD STORE.

RETAIL SALES AND SERVICE, LOW-IMPACT--Retail sales and service not meeting the definitions of High-Impact Retail Sales and Service, Specialty Retail, or a Full-line Food Store.

RETAIL SALES AND SERVICE, SPECIALTY--Low-impact retail sales and service, occupying less than 1,000 square feet, offering for sale only specialized

types of foods, products, or services, including, but not limited to: baked goods, candy, health-food, antiques, fashion accessories, sporting goods, art objects, art and craft supplies, books, clothing, decorative accessories, flowers and plants, handicrafts, jewelry, toys, specialty foods, meats, seafood, shoe repair, and frame shops. No tobacco, beer/wine coolers, or lottery may be included in the inventory of Specialty Retail Sales and Service.

- b. Amend §120-8, relating to permitted uses in the R-1 District, by adding the following new subsections:

H. Retail Sales and Service, Specialty, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

I. Office, when in an existing structure built for a nonresidential use, operating between the hours of 6 a.m. and 9 p.m.

- c. Amend §120-9, relating to special permit uses in the R-1 District, by adding the following new subsections:

G. Retail Sales and Service, Full-line Food Store, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

H. Retail Sales and Service, Low-Impact, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

- d. Amend §120-17, relating to permitted uses in the R-2 District, by adding the following new subsections:

I. Retail Sales and Service, Specialty, when in an existing structure built for a nonresidential use, operating between the hours of 6 a.m. and 9 p.m.

J. Office, when in an existing structure built for a nonresidential use, operating between the hours of 6 a.m. and 9 p.m.

- e. Amend §120-18, relating to special permit uses in the R-2 District, by adding the following new subsections:

M. Retail Sales and Service, Full-line Food Store, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

N. Retail Sales and Service, Low-Impact, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

f. Amend §120-26, relating to permitted uses in the R-3 District, by adding the following new subsections:

M. Retail Sales and Service, Specialty, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

N. Office, when in an existing structure built for a nonresidential use, operating between the hours of 6 a.m. and 9 p.m.

g. Amend §120-27, relating to special permit uses in the R-3 District, by adding the following new subsections:

L. Retail Sales and Service, Full-line Food Store, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

M. Retail Sales and Service, Low-Impact, when in an existing structure built for a nonresidential use, subject to the additional requirements for specified uses in §120-146.1.

h. Amend §120-34, relating to permitted uses and structures in the C-1 District, by amending or adding the following new subsections:

K. Retail sales and service, Full-line Food Store, when in an existing building, subject to the additional requirements for specified uses in §120-146.1.

L. Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in §120-146.1.

M. Retail sales and service, Specialty, subject to the additional requirements for specified uses in §120-146.1.

N. Offices between the hours of 6:00 a.m. and 11:00 p.m.

O. Bars and restaurants, operating between the hours of 6:00 a.m. and 11:00 p.m., including accessory outdoor seating/assembly areas but excluding drive-through facilities.

P. Mixed uses, as listed in this section, not including Industrial uses.

i. Amend §120-35, relating to special permit uses in the C-1 District by repealing subsections H and I, and by relettering subsections J and K as subsections H and I.

j. Amend subsection B of §120-37, relating to bulk requirements in the C-1 District to read as follows:

B. Square footage.

(1) Residential uses.

(a) Maximum square footage, any or each use : NA.

(b) Maximum square footage, detached accessory use or structure: NA.

(2) Nonresidential uses.

(a) Maximum square footage, principal use or structure: 3,000 square feet.

(b) Maximum square footage, detached accessory use or structure: 1,000 square feet.

(3) Mixed-Uses

(a) Maximum square footage, each nonresidential use: 3,000 square feet

(b) Maximum square footage, detached accessory use or structure: 1,000 square feet.

k. Amend §120-42, relating to permitted uses or structures in the C-2 District, by amending the following subsections:

M. Retail sales and service, Full-line Food Store, when in an existing building, subject to the additional requirements for specified uses in § 120-146.1.

N. Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in §120-146.1.

O. Retail sales and service, Specialty, subject to the additional requirements for specified uses in §120-146.1.

P. Limited adult retail store when conducted entirely within an enclosed building.

Q. Health clubs and similar facilities.

R. Theaters.

S. Office.

T. Bars, restaurants and banquet facilities, including accessory outdoor seating/assembly areas provided the outdoor areas only operate between the hours of 6:00 a.m. and 11:00 p.m., excluding drive-through facilities.

I. Amend §120-43, relating to special permit uses in the C-2 District, by adding the following new subsection:

T. Retail sales and service, High-Impact, subject to the additional requirements for specified uses in §120-146.1.

m. Add a new subsection B(3) to §120-45, relating to bulk requirements in the C-2 District:

(3) Mixed-Uses

(a) Maximum square footage, each nonresidential use: 6,000 square feet

(b) Maximum square footage, detached accessory use or structure: NA.

n. Amend §120-50, relating to permitted uses or structures in the C-3 District, by amending or adding the following new subsections:

K. Retail sales and service, Full-line Food Store, subject to the additional requirements for specified uses in §120-146.1.

L. Retail sales and service, High-Impact, subject to the additional requirements for specified uses in §120-146.1.

M. Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in §120-146.1.

N. Retail sales and service, Specialty, subject to the additional requirements for specified uses in §120-146.1.

O. Health clubs and similar facilities.

P. Theaters.

Q. Amusement center.

R. Outdoor entertainment.

S. Office.

T. Motels and hotels.

U. Bars, restaurants and banquet facilities, including outdoor seating/assembly and drive-throughs, subject to the additional requirements for specified uses in §120-136.

V. Drive-throughs, subject to the additional requirements for specified uses in §120-136.

W. Warehouse and wholesale distribution facilities under 15,000 square feet.

X. Light industrial services when conducted entirely within a completely enclosed building.

Y. Research laboratories including testing facilities.

Z. Automotive-related uses, including car washes, vehicle service stations, vehicle sales, vehicle rental services, vehicle repair stations including commercial vehicle repair, and vehicle sales accessory to vehicle repair stations, subject to the additional requirements for specified uses in Article XVIII.

AA. Parking lots as a principal use, including ancillary community garages and parking lots, subject to the additional requirements for specified uses in §120-131.

BB. Sexually oriented businesses, subject to the additional requirements for specified uses in §120-148, including only limited adult retail store, adult retail store and escort agency.

CC. Pawnbrokers.

- o. Amend §120-63, relating to limited uses in the CCD District, by adding the following new subsection:**

F. Retail Sales and Service, High Impact.

- p. Amend §120-64, relating to prohibited uses in the CCD District, by adding the following new subsection:**

E. Pawnbrokers.

- q. Amend subsection A of §120-76, relating to permitted uses in the PMV District, by amending or adding the following new subsections:**

(10) Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in §120-146.1.

(11) Retail sales and service, Specialty, subject to the additional requirements for specified uses in §120-146.1.

(12) Retail sales and service, Full-line Food Store, subject to the additional requirements for specified uses in §120-146.1.

(13) Bars, restaurants and the like including outdoor seating/assembly areas provided the outdoor areas only operate between the hours of 6:00 a.m. and 11:00 p.m., but excluding drive-through facilities.

(14) Manufacturing uses when the products are sold as retail for an individual consumer.

(15) Parks and recreation uses.

- r. Amend subsections (c) through (g) of subsection A(7) of §120-77, relating to permitted uses in the H-V District to read as follows:**

(c) Bars and restaurants, not exceeding 2,500 square feet and excluding drive-through facilities.

- (d) Private clubs not exceeding 2,500 square feet.
- (e) Office space not exceeding 2,500 square feet.
- (f) Retail sales and services, Specialty.
- (g) Retail sales and services, Low-Impact, not exceeding 2,500 square feet.
- s. Amend subsection B(1) and add B(13) of §120-77, relating to special permit uses in the H-V District to read as follows:

(1) The following uses when located within 30 feet of the edge of the Genesee River:

- (a) Museums and aquariums.
- (b) Private clubs.
- (c) Bars and restaurants, excluding drive-through facilities.
- (d) Tourist information centers.
- (e) Other establishments relating to and supporting water-dependent activities.

(13) Retail sales and service, Full-line Food Store, subject to the additional requirements for specified uses in §120-146.1.

- t. Add a new subsection (n) to subsection A(1) of §120-81, relating to permitted uses and structures in the M-1 District:

(n) Retail sales and service, Full-line Food Store, when in an existing building, subject to the additional requirements for specified uses in § 120-146.1.

- u. Amend the following subsections of subsection B of §120-81, relating to permitted uses and structures in the M-1 District to read as follows:

(3) Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in §120-146.1.

(4) Retail sales and service, Specialty, subject to the additional requirements for specified uses in §120-146.1.

(5) Offices and clinics.

(6) Bars, restaurants and banquet facilities.

- v. Amend the following subsections of subsection A of §120-83, relating to special permit uses in the M-1 District to read as follows:

(1) Retail sales and service, High-Impact, subject to the additional requirements for specified uses in §120-146.1.

- (2) Offices or clinics.
- (3) Bars and restaurants.
- (4) Motels and hotels.
- (5) Amusement centers.
- (6) Public and semipublic uses.
- (7) Health clubs.
- (8) Mixed uses.
- (9) Entertainment, subject to the additional requirements for specified uses in §120-137.
- (10) Places of worship.
- (11) Pawnbrokers.
- w. Add the following new subsection to subsection D(3)(a) of §120-120, relating to prohibited uses in the Mt. Read - Emerson Urban Renewal District:

[8] Pawnbrokers.

- x. Add the following new subsection to subsection F(1)(a) of §120-120, relating to prohibited uses in the Ridgeway Urban Renewal District:

[10] Pawnbrokers.

- y. Add the following new subsection to subsection I(1)(b) of §120-120, relating to prohibited uses in the Third Ward Urban Renewal District:

[11] Pawnbrokers.

- z. Amend subsection L(1)(b)[1][c] of §120-120, relating to permitted uses in the Neighborhood Commercial Land Use Area of the Brooks Landing Urban Renewal District to read as follows:

[c] Retail sales and services, Full-Line Food Stores, Low-Impact and Specialty, subject to the additional requirements for specified uses in §120-146.1.

- aa. Amend subsection L(1)(c)[1][c] of §120-120, relating to permitted uses in the Riverfront Commercial Land Use Area of the Brooks Landing Urban Renewal District to read as follows:

[c] Retail sales and service, Full-Line Food Stores, Low-Impact and Specialty, subject to the additional requirements for specified uses in §120-146.1, when conducted in an entirely closed building.

6

bb. Amend subsection M(1)(d) of §120-120, relating to permitted uses in the Erie Canal Urban Renewal District to read as follows:

(d) Retail sales and service, Full-Line Food Stores, Low-Impact and Specialty, subject to the additional requirements for specified uses in §120-146.1.

cc. Amend subsection N(1)(b) of §120-120, relating to permitted uses in the La Marketa North Clinton Avenue Urban Renewal District to read as follows:

(b) Retail sales and service, Full-Line Food Stores, Low-Impact and Specialty, subject to the additional requirements for specified uses in §120-146.1.

dd. Add a new subsection N(2)(c) of §120-120, relating to special permit uses in the La Marketa North Clinton Avenue Urban Renewal District:

(c) Retail sales and service, High-Impact, subject to the additional requirements for specified uses in §120-146.1.

ee. Amend subsection B(1) of PDD #9, Canalside Business Center, relating to permitted uses and structures, by amending or adding subsections (t) through (y) to read as follows:

(t) Retail sales and service, Full-line Foodstore, subject to the additional requirements for specified uses in §120-146.1.

(u) Retail sales and service, High-Impact, subject to the additional requirements for specified uses in §120-146.1.

(v) Retail sales and service, Low-Impact, subject to the additional requirements for specified uses in §120-146.1.

(w) Retail sales and service, Specialty, subject to the additional requirements for specified uses in §120-146.1.

(x) Technical and vocational schools.

(y) Warehouse and distribution facilities.

ff. Add the following new subsection to subsection D, relating to prohibited uses in PDD#12, Eastman Business Park:

(12) Pawnbrokers.

gg. Add the following new section:

§120-146.1. Retail sales and service.

The purpose of this section is to regulate retail sales and service to promote the health, safety, and general welfare of the citizens and protect the quality of the neighborhoods

of the City. High-impact retail sales and service, due to the nature, volume or intensity of the sales and services provided, has a history of or a likelihood of creating negative impacts to adjacent properties or the surrounding neighborhood by virtue operational impacts such as noise, traffic, parking, loitering, and increased need for police services. Other retail operations, low-impact, specialty, and full-line food stores, have so few negative impacts that they may be located in close proximity to residential uses as they will offer products and services to residents.

A. Distance separation requirements.

(1) **Measurement.** The following separation requirements shall be measured from any lot line on the same or an adjoining frontage of a High-Impact Retail Sales and Service business to the lot line of another High-Impact Retail Sales and Service business or a protected use listed below. Where a multi-tenant facility such as a shopping center is involved, measurement shall occur from the boundary of the leasehold interest instead of the property line.

(2) **Protected uses.** For the purpose of measuring separation from High-Impact Retail Sales and Service, "protected uses" shall include the following:

(a) Public and semipublic uses, except police and fire stations;

(b) Private Schools

(3) **Distance requirements.**

(a) High-Impact Retail Sales and Service.

[1] Distance from any protected use: 500 ft

[2] Distance from any other High-Impact Retail Sales and Service: 500 ft.

B. Design standards.

In addition to the standards listed in Article XIX of this Chapter, the following apply:

(1) In new construction, as well as reoccupancy of an existing building, areas of transparency shall be provided along the primary street frontage and shall be equal to 70% of the wall area between the height of two and eight feet from the ground.

(2) In all Retail Sales and Service uses, blocking the windows with interior shelving, or the like, thereby reducing the transparency, is strictly prohibited.

C. Hours of operation.

Use	C-1	C-2	C-3	CCD	M-1	R	V-C
High-Impact	NA	TBD by CPC	24 hours	6am to 2 am	24 hours	NA	NA
Low-Impact	6am to 11pm	6am to 2 am	24 hours	24 hours	24 hours	6am to 9pm	Refer to District Regs.
Specialty	6am to 11pm	6am to 2 am	6am to 11pm	24 hours	6am to 11pm	6am to 9pm	6am to 9pm
Full-line Food Store	6am to 11pm	6am to 2 am	24 hours	24 hours	24-hours	6am to 9 pm	Refer to District Regs.

hh. Amend §120-191, Procedures approved by the Director of Zoning, by repealing subsection B(4)(b)[2].

ii. Amend subsection B(5)(a) of §120-195, Procedures approved by the Zoning Board of Appeals to read as follows:

(a) Permit any use or development in a residential district which is not permitted as of right by the use regulations applicable in such district or in any other residential district established by this chapter.

jj. Amend the first sentence of subsection G(1) of §120-199, Nonconforming use, to read as follows:

When the active operation of all or a portion of a nonconforming use is discontinued or abandoned for a period of nine consecutive months, except for nonconforming High-Impact Retail Sales and Service, for which the period shall be three consecutive months, regardless of any intent to resume or not to abandon the use, the use or portion thereof shall not be reestablished or resumed.

Section 2. This ordinance shall take effect on November 1, 2012.

Below is an interpretation of the zoning law in Rochester, NY from Kerry Synder, Legal Counsel with the Center for Public Health and Tobacco Policy, New England Law – Boston, MA.

My take on the new zoning law in Rochester:

The City has created different categories of retailers identified in the zoning code. Notably, retailers required to obtain a tobacco license, or who sell tobacco, tobacco paraphernalia or smoking paraphernalia will now be considered “high-impact” retailers.

It appears that the City is trying to incentivize traditional grocery stores to be healthier by choosing to limit the unhealthy products they sell (tobacco, alcohol or lottery tickets). Those that sell more than one category of these products will be considered “low-impact” retailers, rather than “full-line food stores,” and may be treated differently.

The new ordinance then limits where these different types of retailers may be located throughout the city. High-impact retailers are the most restricted. They are permitted (without a permit) in the Regional Destination Zones and the Canalside Business Center. They may apply for a special permit to locate in the Community Center and Industrial Districts. They are limited in the Center City Districts, and they are prohibited in Residential Districts.

(By comparison, these retailers were permitted in the Neighborhood Center, Community Center, Industrial Districts, and the Regional Destination Zone without a permit so long as they operate only between 6am and 11pm.)

When high-impact retailers are permitted, they must adhere to certain restrictions. These restrictions include being located at least 500ft from any “protected use.” Those protected uses consists of land used for “public and semipublic uses” (including “uses operated by the public or semipublic body such as schools, public libraries, fire and public safety buildings, museums, parks, public meeting halls, governmental buildings and community centers”) and private schools.

These retailers must also be located 500 feet from any OTHER high-impact retailer.

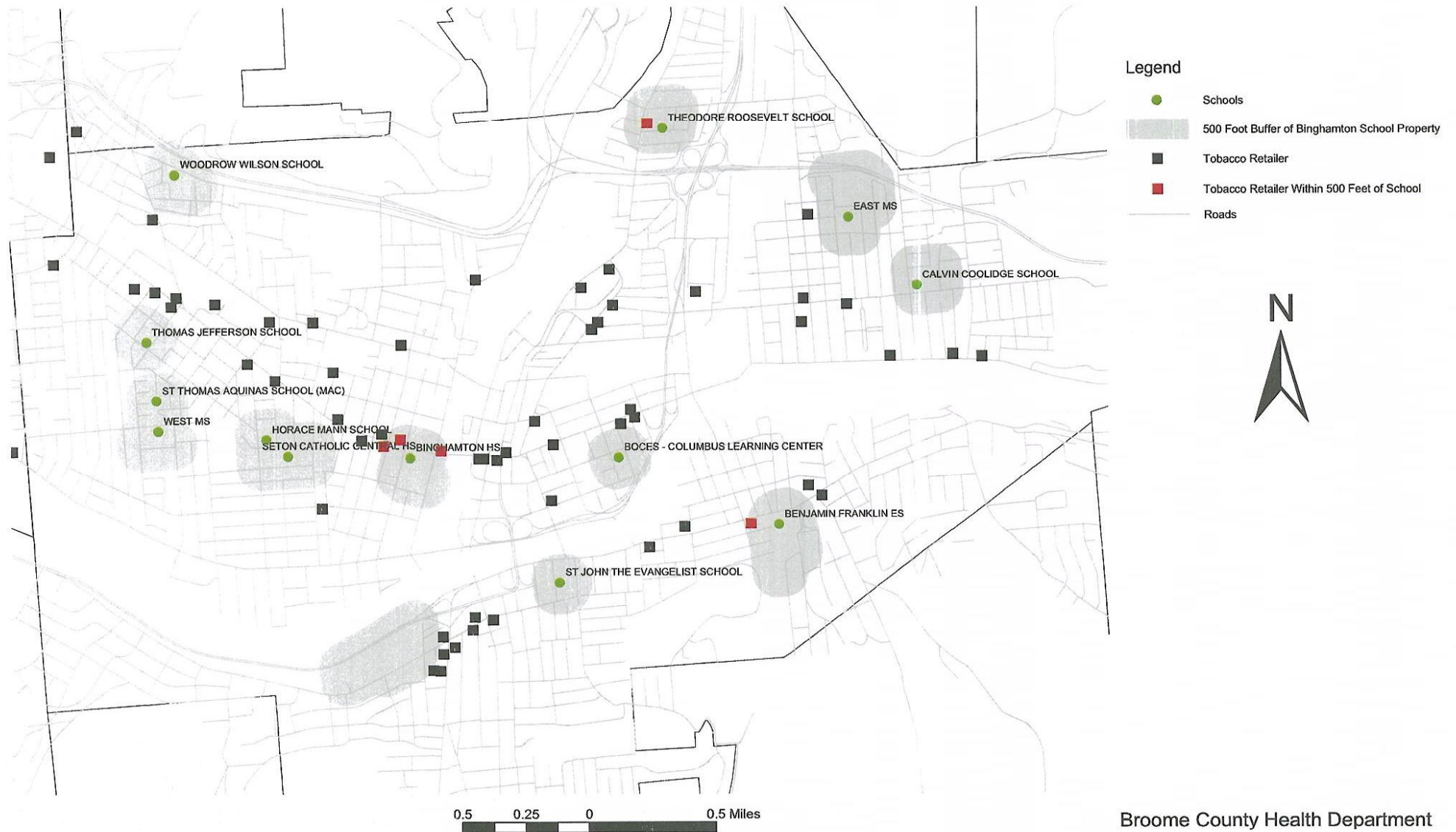
High-impact retailers must also provide large windows along the primary street frontage of the building, and cannot block those windows with shelving (signage may still be ok). They must also adhere to restrictions on their hours of operations, depending on where they are located.

Finally, the new law reduces the time required for a nonconforming use to be considered abandoned. When a zoning law is changed, any existing land use that does not comply with the new rules are considered “nonconforming uses.” They can continue to operate, but cannot change their use significantly else they will lose the ability to remain nonconforming. Additionally, if ownership changes hands or the nonconforming use is “abandoned” or stopped for a period of time, the city can then enforce the new rules on that land. In the case of high-impact retailers, if they discontinue or abandon their nonconforming use for 3 months, they city can force them to comply with the new law.

All-in-all, this is positive progress in city planning for Rochester. As the city grows and changes, the location and density of these retailers will be more regulated. As businesses change hands or uses, these new rules will be put into effect.

It definitely appears to be a plan for a healthier community!

Retail Tobacco Facilities within 500 feet of Public and Private School Properties within the City of Binghamton



Center for Public Health & Tobacco Policy

NEW ENGLAND LAW  BOSTON

Tobacco Retailer Number, Density and Location

Effects on Youth and Other Vulnerable Populations

The overwhelming majority of adult tobacco users began using tobacco and became addicted by the age of 18.¹ If someone hasn't started using tobacco by then, one probably never will.² In New York, 12.6 percent of high school, and 3.3 percent of middle school students are current tobacco users.³

The number, density and location of tobacco retailers significantly affect adolescent tobacco use.⁴ Research indicates that adult tobacco use is also influenced by these factors.⁵ Additionally, studies show that the number and density of tobacco retailers serving vulnerable populations are disproportionately high and influence high tobacco use rate in these communities.⁶

Increased numbers and density of tobacco retailers translates to increased tobacco use.

- The more tobacco retailers, the greater the access for young people and the more likely young people are to obtain and use tobacco products.⁷
- Additionally, increased density of tobacco retailers is correlated with increased tobacco use, including youth smoking.⁸
- Despite this — or likely because of this — there is a higher concentration of tobacco retailers in areas with high proportions of minors.⁹
- Despite this — or likely because of this — there is a higher concentration of tobacco retailers in areas with high proportions of disadvantaged residents.¹⁰

Accordingly, reducing tobacco retailer density is a viable policy for preventing youth tobacco use.

Youth are more likely to use tobacco when tobacco retailers are located within a short distance of their schools.

- In New York State, 51% of tobacco retailers are located within 1,000 feet of an elementary or secondary school.¹¹
- Tobacco advertising is more prevalent inside of tobacco retailers located near schools.¹²
- Youth exposure to tobacco advertising can lead to an increase in youth initiation of smoking especially when tobacco retailers are located near schools.¹³
- Schools with higher rates of youth smoking tend to be surrounded by a larger number of tobacco retailers in the neighborhood around the school.¹⁴

Point of Sale Displays Target Youth

- Point-of-sale (POS) displays may attenuate the resolve of any youth against future smoking.¹⁵ Studies have found a direct, positive relationship between tobacco advertising and likelihood of youth smoking, regardless of youth impressionability.¹⁶
- Youth who shop at convenience stores filled with tobacco advertisements are “twice as likely to start smoking.”¹⁷
- Tobacco companies pay retailers “promotional allowances” in exchange for which retailers are required to display their products on “power walls,” large, eye-catching displays of tobacco products and advertisements usually located directly behind the cash register.¹⁸

A retail licensing scheme regulating the number of tobacco retailers and their location can reduce youth tobacco use.

- Local governments can limit and gradually reduce the number of retail outlets, without hurting existing local businesses, by restricting the issuance of new licenses (renew only existing licenses).
- Local governments could also utilize a licensing scheme in conjunction with zoning ordinances to restrict tobacco retailers from areas frequented by children, such as near schools, libraries, playgrounds, and youth-oriented businesses (e.g. video arcades) and residential areas.¹⁹

¹ U.S. DEP'T. OF HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND ADULTS: A REPORT OF THE SURGEON GENERAL 8 (2012).

² *Id.*

N.Y. STATE DEP'T OF HEALTH, YOUTH ACCESS TOBACCO ENFORCEMENT PROGRAM ANNUAL REPORT.

³ OCTOBER 1, 2009 – SEPTEMBER 30, 2010 app.4 (2011), available at

http://www.health.ny.gov/prevention/tobacco_control/docs/tobacco_enforcement_annual_report_2009-2010.pdf.

⁴ TobaccoFreeNYS.org, *What's in Store For Our Kids*, available at

<http://www.tobaccofreenys.org/images/POS/POS-Impact-On-Youth.pdf>.

⁵ N. Andrew Peterson et al., *Tobacco Outlet Density, Cigarette Smoking Prevalence, and Demographics at the County Level of Analysis*, 40 SUBSTANCE USE & MISUSE 1627, 1629 (2005) (finding that counties with a lower density of tobacco retailers showed lower smoking prevalence and counties with a higher density of tobacco retailers showed a higher smoking prevalence); Lorraine R. Reitzel et al., *The Effect of Tobacco Outlet Density and Proximity on Smoking Cessation*, 101 AM. J. OF PUB. HEALTH 315 (2011) (finding that study participants living within a short walking distance to a tobacco retailer were less likely to remain abstinent from smoking six months after a quit attempt than those who lived farther from a tobacco retailer).

⁶ See Robert John et al., *Point of Sale Marketing of Tobacco Products: Taking Advantage of the Socially Disadvantaged?*, 20 J. OF HEALTH CARE FOR THE POOR & UNDERSERVED 489 (2009); see also Harriet A. Washington, *Burning Love: Big Tobacco Takes Aim at LGBT Youths*, 92 AM. J. OF PUB. HEALTH 1086 (2002); see also Dolores Acevedo-Garcia et al., *Undoing an Epidemiological Paradox: The Tobacco Industry's Targeting of US Immigrants*, 94 AM. J. OF PUB. HEALTH 2188 (2004).

⁷ TobaccoFreeNYS.org, *supra* note 3.

⁸ Scott P. Novak et al., *Retail Tobacco Outlet Density and Youth Cigarette Smoking: A Propensity-Modeling Approach*, 96 AM. J. PUB. HEALTH 670, 673-4 (2006); Lisa Henriksen et al., *Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools?*, 47 PREV. MED. 210-214 (2008).

⁹ Scott P. Novak et al., *Retail Tobacco Outlet Density and Youth Cigarette Smoking: A Propensity-Modeling Approach*, 96 AM. J. PUB. HEALTH 670, 673 (2006).

¹⁰ *Id.*

¹¹ Douglas A. Luke et al., *Family Smoking Prevention and Tobacco Control Act: Banning Outdoor Tobacco Advertising Near Schools and Playgrounds*, 40 AM. J. PREV. MED. 295, 300 (2011).

¹² U.S. DEP'T. OF HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND ADULTS: A REPORT OF THE SURGEON GENERAL 600 (2012).

¹³ *Id.*

¹⁴ *Id.* at 106.

¹⁵ Melanie Wakefield et al., *An Experimental Study of Effects on schoolchildren of Exposure to Point-of-Sale Cigarette Advertising and Pack Displays*, 21 HEALTH EDUC. RES. 338, 346 (2006).

¹⁶ Reiner Hanewinkel et al., *Cigarette Advertising and Adolescent Smoking*, 38 AM. J. PREVENTATIVE MED. 359, 366 (2010). The association between tobacco advertising and youth smoking is specific to tobacco advertising content and not simply a marker of an adolescent who is generally receptive to marketing.

¹⁷ Center for Tobacco-Free Kids, *Point of Sale Advertising 1*, January 2011, available at http://tobaccofreecenter.org/files/pdfs/en/APS_point_of_sale_en.pdf.

¹⁸ Kurt M. Ribisl, PhD, Presentation at the Triennial Meeting of the National Association of Attorneys General: Retail tobacco advertising: Significance and solutions (Oct. 16, 2007) (presentation available at http://www.naag.org/backpages/naag/tobacco/naag_tobacco/Presentations/Ribisl%20Triennial.pdf)

¹⁹ Marice Ashe et al., *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, 93 AM. J. PUB. HEALTH 1404, 1407 (2003).